

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

BAYERISCHE MOTOREN WERKE AG, BMW
OF NORTH AMERICA, LLC, ROLLS-ROYCE
MOTOR CARS LIMITED, and ROLLS-ROYCE
MOTOR CARS NA, LLC,

Plaintiffs,

v.

HINDERER AUTOMOTIVE, LLC, *dba* TOY
BARN, and JUSTIN C. HINDERER,

Defendants.

Case No. 2:15-cv-03003-ALM-EPD

Judge Algenon L. Marbley

Magistrate Judge Elizabeth A. Preston Deavers

**CONSENT FINAL JUDGMENT AND
PERMANENT INJUNCTION**

Plaintiffs Bayerische Motoren Werke AG, BMW of North America, LLC, Rolls-Royce Motor Cars Limited, and Rolls-Royce Motors Cars NA, LLC (collectively, “Plaintiffs” or the “BMW Group”), having filed a Complaint on November 17, 2015 against Defendants Hinderer Automotive, LLC, *dba* Toy Barn, and Justin C. Hinderer, claiming trademark infringement under 15 U.S.C. § 1114(1), unfair competition and false designation of origin under 15 U.S.C. § 1125(a), deceptive trade practices under O.R.C. § 4165.02, and trademark infringement, unfair competition, and breach of contract under Ohio common law;

WHEREAS Plaintiffs, having alleged that they have, in connection with their business of, *inter alia*, designing, manufacturing, distributing, servicing, and selling automobiles and providing parts and accessories for automobiles, extensively used and advertised said products and services under their Roundel logo and Rolls-Royce Badge (“RR Badge”), and that Plaintiffs are the exclusive owners of valid, subsisting, and incontestable federal trademark registrations for Plaintiffs’ Roundel logo and RR Badge, and that Plaintiffs’ Roundel logo and RR Badge are

famous and distinctive marks among purchasers of motor vehicles as well as among members of the general public, and Defendants having acknowledged same;

WHEREAS Defendants, having displayed the BMW Group's Roundel logo on banners at their competing automotive business, in a video advertisement on YouTube, and on Instagram; and the BMW Group's RR Badge on Instagram;

WHEREAS Defendants, to avoid the expense and distraction of protracted litigation, and wishing to settle their dispute with Plaintiffs amicably;

WHEREAS Defendants, acknowledging the jurisdiction of this Court over them and the subject matter hereof; having waived the entry of findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure; and having waived any objections with regard to the right to appeal this Consent Judgment;

WHEREAS Defendants have agreed to acknowledge the rights as set forth in the foregoing clauses, and that infringement of those rights has resulted and, absent relief, will continue to result in irreparable harm to Plaintiffs;

It further appearing that this Court has jurisdiction over the subject matter hereof;

With the consent of Plaintiffs and Defendants, and for good cause, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. Defendants, their agents, servants, distributors, suppliers, business partners, related companies, employees, representatives, attorneys, successors, assigns, and all others in active concert or participation with any of them agree to be and are permanently enjoined and restrained from:

(a) using the BMW Group's Roundel logo and RR Badge pictured below, or any other mark that is confusingly similar to these marks, or any other mark or designation of the

BMW Group, including, but not limited to, use of these marks either alone or part of any signs, flags, banners, posters, interior and exterior walls, doors, window etchings, internet or print advertisements, commercial videos, photographs, internet websites, marketing and promotional materials, stationery, and business cards, or otherwise in connection with their business;



(b) making any trademark use of any other BMW Group trademarks and logos, or colorable imitations thereof;

(c) indicating or suggesting in any manner that Defendants' goods or services are or were somehow sponsored, or approved by or affiliated with the BMW Group;

(d) passing off, promoting, or selling any product or service as a product or service authorized by or under the supervision or control of the BMW Group when such, in fact, is not the case;

(e) indicating in any matter that Plaintiffs' trademarks, logos or trade dress belong to or are owned by Defendants; and

(f) doing any other act or thing likely to confuse, mislead, or deceive others into believing that Defendants, or their products or services, emanate from, or are connected with, sponsored by or approved by the BMW Group.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendants are directed to:

2. Remove any and all remaining BMW Group marks, and any colorable imitations thereof, from their building(s), signs, flags, banners, advertisements, websites, internet listings, photographs and videos posted on internet websites including YouTube and Instagram, including but not limited to the usage appearing in Exhibit A hereto, and elsewhere in connection with the advertising, marketing, or promotion of their business, except for as noted in paragraph 6 below.

3. In accordance with Section 36 of the Lanham Act, 15 U.S.C. § 1118, destroy all labels, signs, flags, banners, prints, packages, bottles, receptacles, containers, business cards, letterhead, advertisements and other promotional materials in Defendants' possession or control bearing Plaintiffs' Roundel logo and RR Badge and trademark use of any other BMW Group marks.

4. File with the Court and serve on counsel for Plaintiffs within sixty (60) days after entry of this Order, a sworn written statement pursuant to § 34(a) of the Federal Trademark Act, 15 U.S.C. § 1116(a), setting forth in detail the manner and form in which the Defendants have complied with this Consent Judgment.

IT IS FURTHER HEREBY AGREED, ORDERED, ADJUDGED AND DECREED that:

5. If either Defendant violates this Consent Judgment, then Defendants agree that the BMW Group will be irreparably harmed due to its lack of control over Defendants' use of the BMW Group's mark(s), and shall be immediately entitled to preliminary and permanent injunctive relief (without the need for any underlying adjudication as to likelihood of confusion) to ensure compliance with this Consent Judgment, and a liquidated damages payment of \$5,000.00 per prohibited use per month, plus reimbursement of the BMW Group's reasonable attorneys' fees and costs. It is understood and agreed that said amount is fixed as liquidated damages because of the difficulty of ascertaining the exact amount of damages that may be

sustained because of such use. It is further understood and agreed that said amount fixed as liquidated damages is a reasonable amount, considering the damages that the BMW Group could sustain in the event of such use. Such liquidated damages and attorneys' fees and costs shall not be exclusive of any other monetary or other remedies to which the Court may find the BMW Group entitled in the event of such violation. Prior to seeking enforcement of this Judgment, the BMW Group shall provide notice and opportunity to cure any perceived violation of the obligations of this consent order. Defendants shall have five business days to cure said violation. Defendants shall be afforded the opportunity to cure for only one occurrence. The BMW Group need not provide notice and opportunity to occur upon any violation after a first notice and opportunity to cure has been given or upon failure to cure after notice has been given.

6. It is further understood by the parties that the Defendants shall continue to have the right to display, in advertisements or on the Internet, images of BMWs that include incidental reference to, but do not center on, focus, focus or feature, BMW Group marks on the vehicles. For example, the advertisement attached as Exhibit "B" is permissible use pursuant to this paragraph and under this consent order. An example of a prohibited use is attached as Exhibit "C".

7. The BMW Group and Defendants shall each bear their own attorneys' fees and expenses incurred in connection with the Complaint and Consent Judgment.

8. Defendants shall provide a copy of this Consent Judgment to each of their affiliates, partners, managers, agents, representatives, successors, and assigns.

9. This Consent Judgment is binding upon Defendants and their officers, agents, servants, employees, independent contractors and attorneys, or any other person or entity acting in concert or participating with the Defendants.


10. Each party to this Consent Judgment represents that such party had counsel and/or the opportunity to consult counsel in connection with the consideration and execution of this Consent Judgment. Each party acknowledges that he or it understands and agrees to the terms of this Consent Judgment.

11. This Court shall retain jurisdiction of this matter and over the parties thereto for the purpose of enforcing the terms of this Consent Judgment entered into between Plaintiffs and Defendants with respect to the subject matter of this action.

12. In accordance with § 34 of the Federal Trademark Act, 15 U.S.C. § 1116, the Clerk of the Court shall notify the Commissioner of Patents and Trademarks of the entry of this Consent Judgment who shall enter it upon the records of the United States Patent and Trademark Office.

13. There being no just reason for delay, the Clerk of this Court is hereby directed, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, to enter this Consent Judgment forthwith.


14. The parties, through their undersigned counsel, hereby consent to the entry of the foregoing Consent Judgment and waive any and all rights of appeal.

By:  President
Hinderer Automotive, LLC

Dated: 3/14/16

By:  Justin C. Hinderer

Dated: 3/14/16

By:  David J. Boylan
325 John H. McConnell Boulevard
Suite 600
Columbus, OH 43215-2673

Dated: 3/14/16

Telephone: (614) 469-3939
Facsimile: (614) 461-4198
dboylan@jonesday.com

Counsel for Plaintiffs Bayerische Motoren Werke AG, BMW of North America, LLC, Rolls-Royce Motor Cars Limited, and Rolls-Royce Motors Cars NA, LLC

By: 
F. Michael Speed, Jr.
Standley Law Group LLP
6300 Riverside Drive
Dublin, Ohio 43017
Telephone: (614) 792-5555
Facsimile: (614) 792-5536
mspeed@standleyllp.com

Dated: 3-14-2016

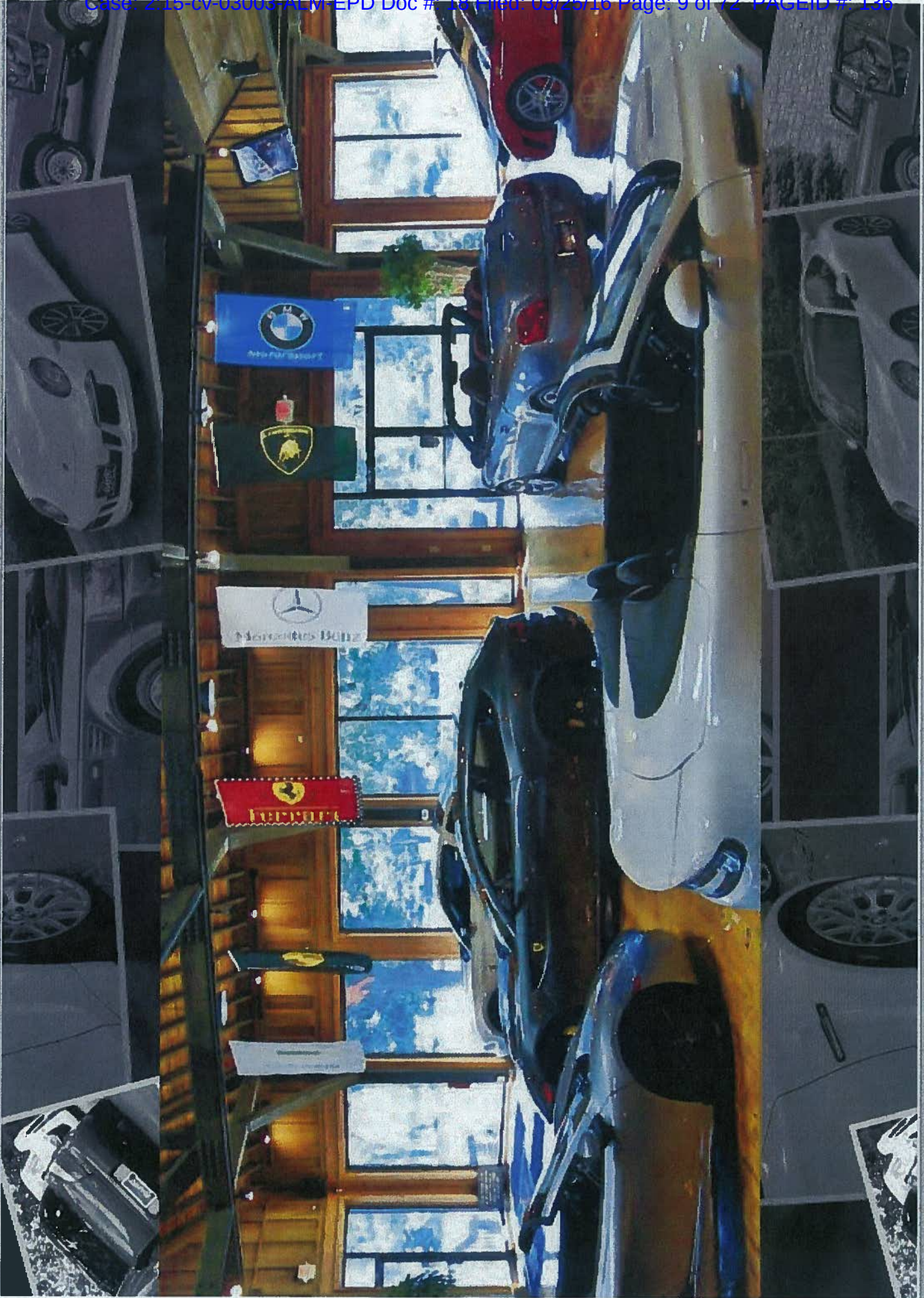
Counsel for Defendants Hinderer Automotive, LLC, *dba* Toy Barn, and Justin C. Hinderer

DATE: 25 March 2016

SO ORDERED: 

Hon. Algenon L. Marbley
United States District Judge

EXHIBIT A



Uploads from ToyBamCars's channel
by ToyBamCars 4,476 views

06 BMW M3 Copy.wmv
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156,270 views

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2006 BMW M3 COMPETITION COUPE
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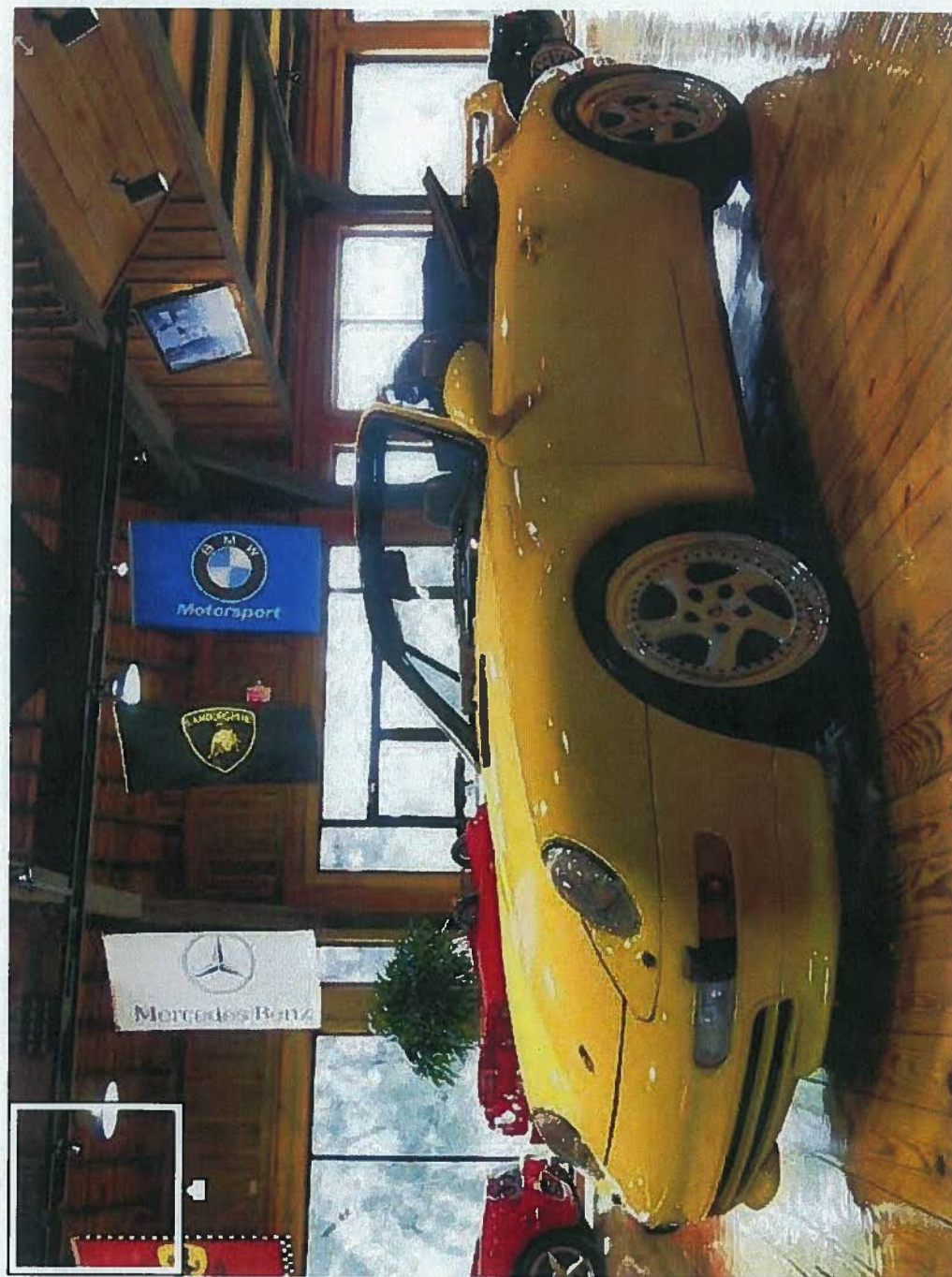
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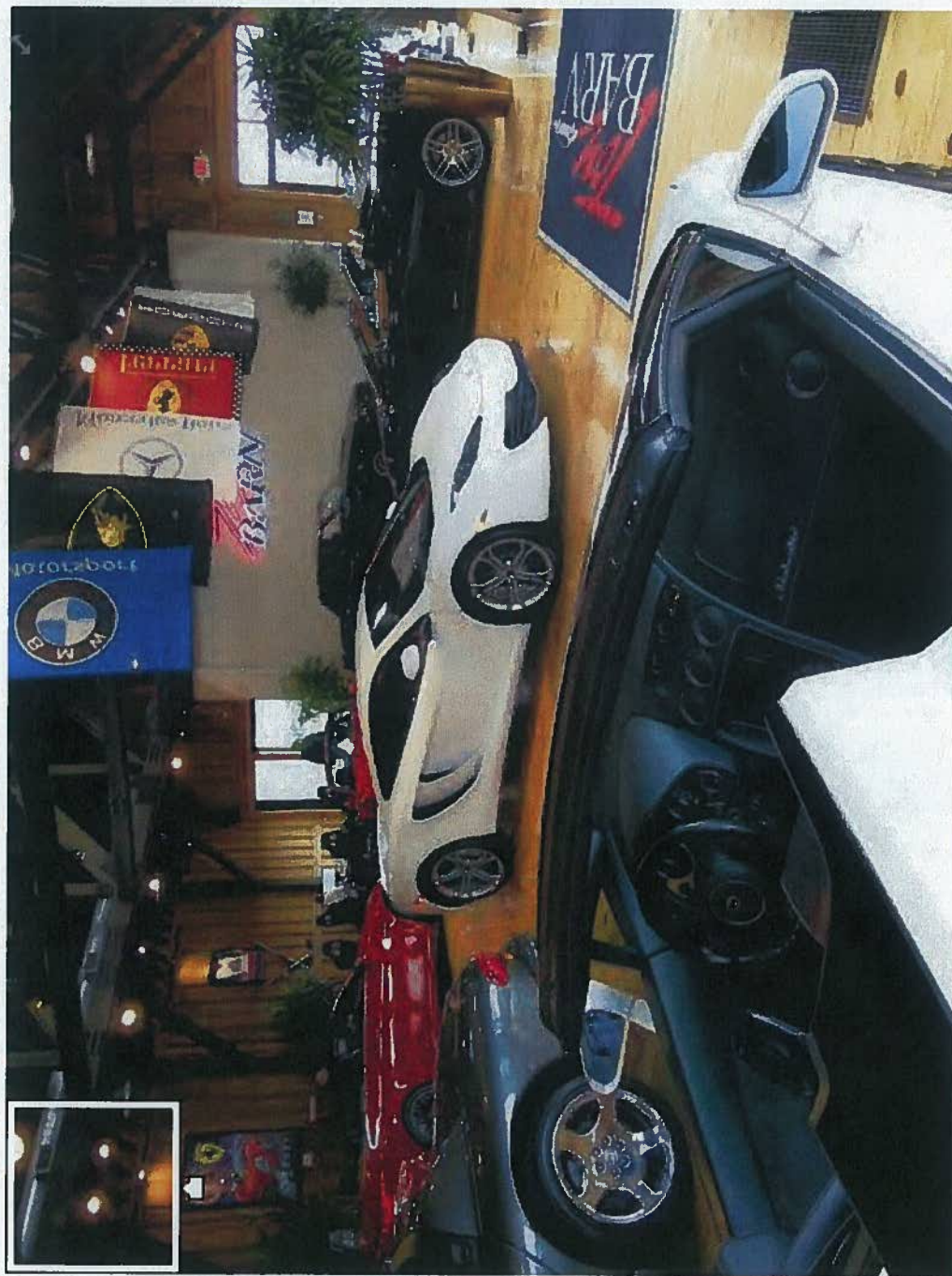
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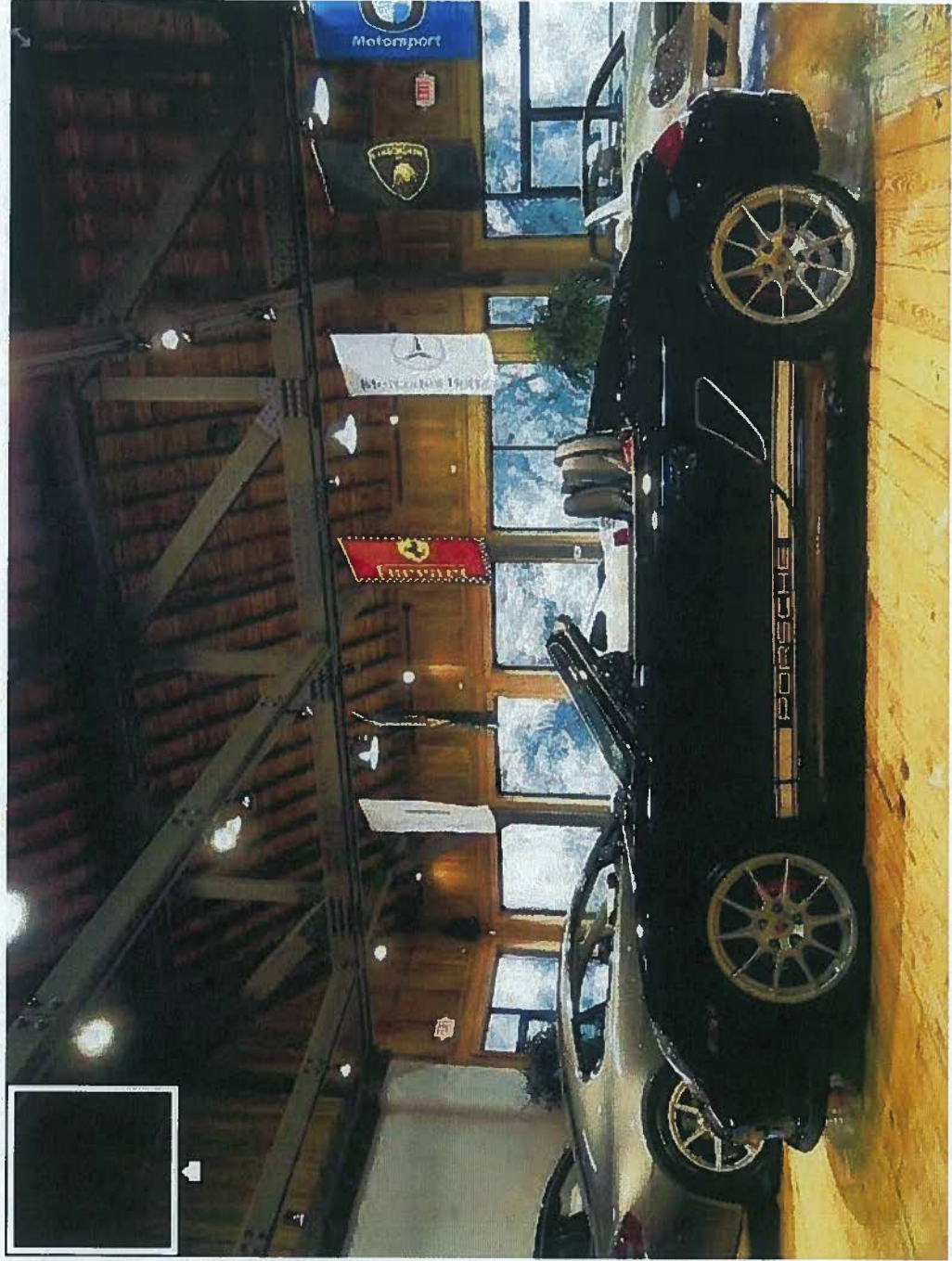
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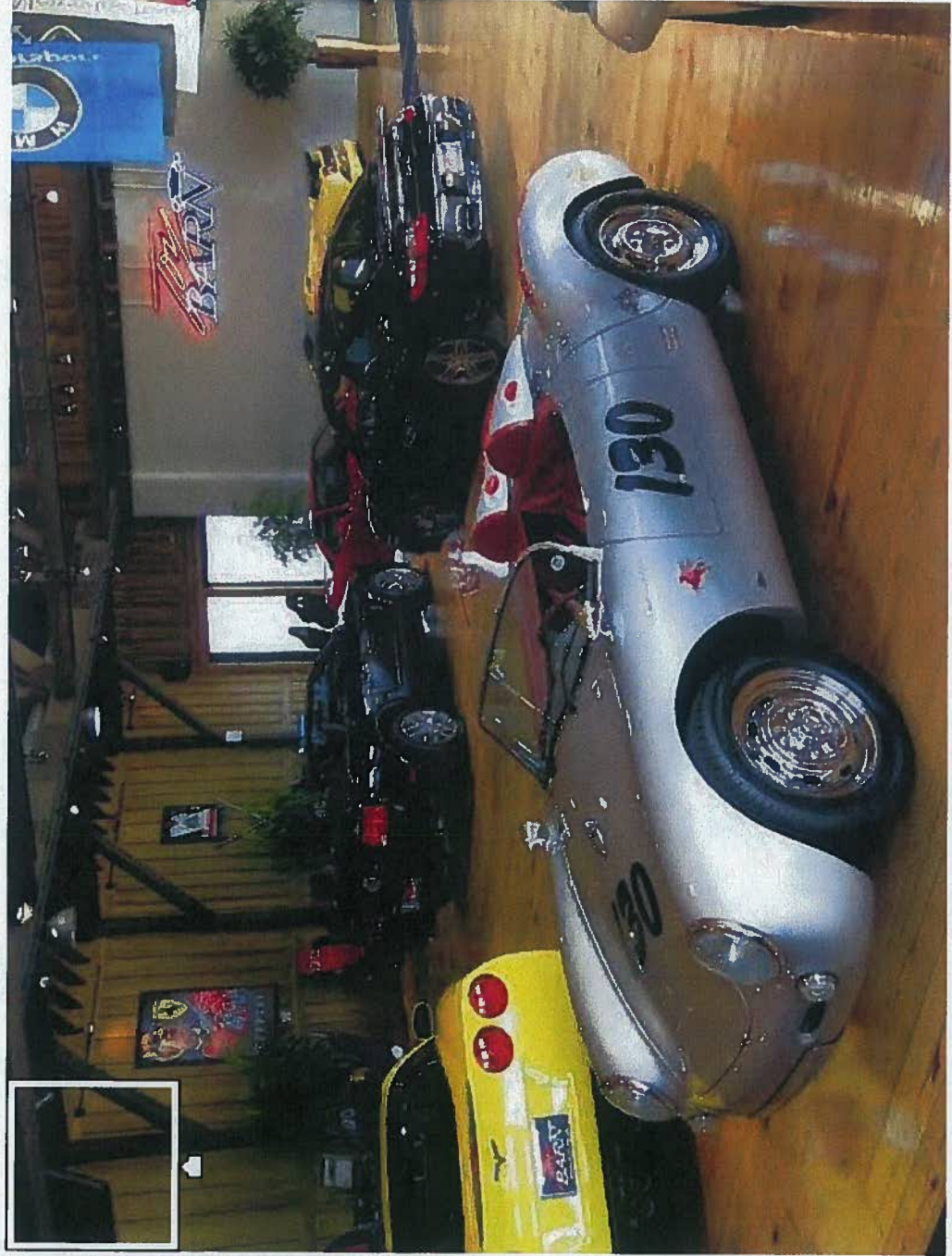
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toy barn dublin ohio on Instagram: "bouss #cars_are_awesome"



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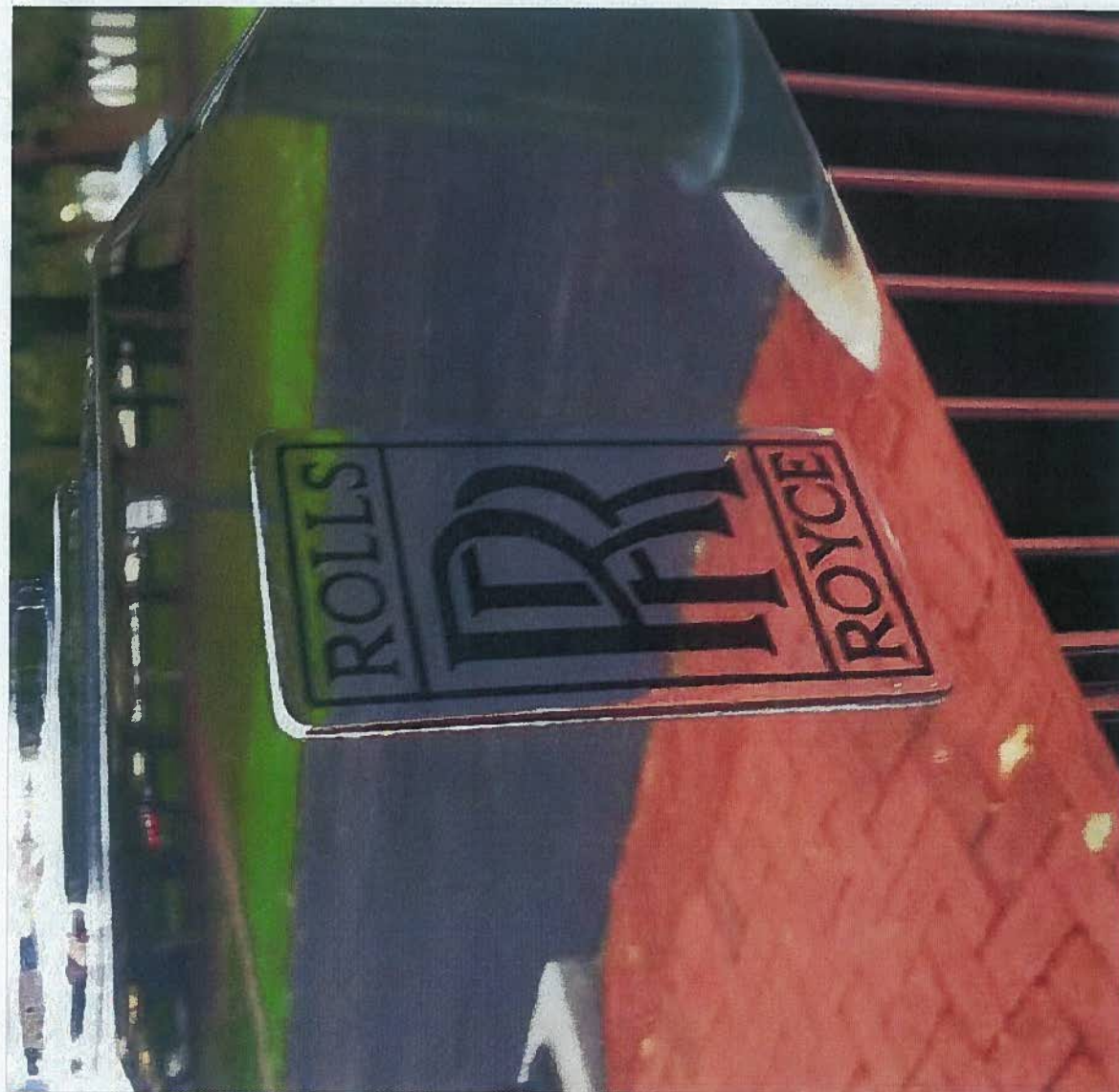
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toy barn dublin ohio on Instagram: "RR #cars_are_awesome"



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toybarn_cars RR #cars_are_awesome

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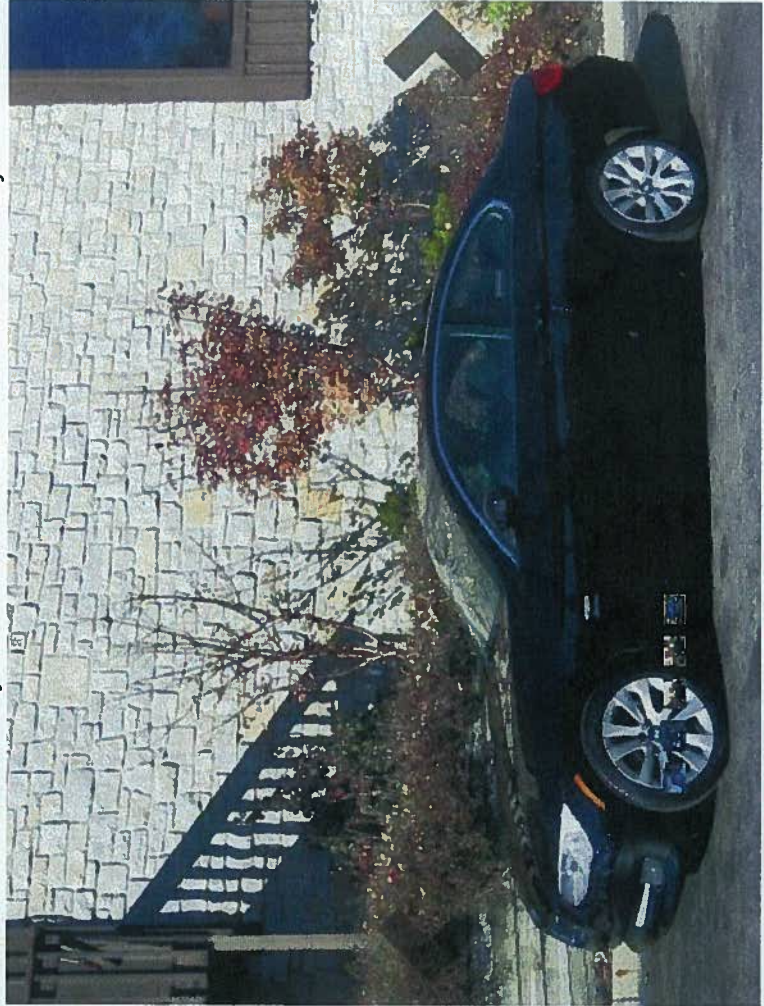
EXHIBIT B

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>> BMW (used-cars/used-vehicle-inventory.html?conditions=pre-owned&makes=BMW) >> 3 Series (used-cars/used-vehicle-inventory.html?conditions=pre-owned&makes=BMW&models=3series) >> 2013 (used-cars/used-vehicle-inventory.html?conditions=pre-owned&makes=BMW&models=3series&minYear=2013&maxYear=2013)

2013 BMW 3 Series 328i xDrive

\$24,986 USD

Photo Gallery



Video Gallery

- Call 866-974-3345
- CONDITION: Pre-Owned
 - MILEAGE: 36431
 - TRIM: 328i xDrive
 - EXTERIOR: Jet Black
 - INTERIOR: Black
 - Body Style 2dr Car
 - Engine: Gas I6 3.0L/183
 - TRANSMISSION: Automatic
 - Drivetrain: AWD
 - VIN: WBAKF3C56DJ386078
 - Stock: 11343

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2013 BMW 3 Series 328i xDrive

HOURS OF OPERATION

Monday-Thrusday 10:00 AM - 7:00 PM

Friday 10:00 AM - 6:00 PM

Saturday 10:00 AM - 6:00 PM

Sunday CLOSED

ADDRESS5100 Post Road,
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Vehicle Summary

Standard Features

Dealer Comments

- If you're in the market for an entry-level luxury car that provides a tremendous mix of handling, ride quality, performance, luxury and styling all into one package than the 2013 BMW 328i xDrive is our top choice! Finalized in Jet Black over Black leather, this 3.0L inline V6 produces a fantastic 230hp and 200 lb-ft of torque. This exquisite coupe comes loaded with impressive options: 6-Speed Automatic Transmission, Premium Package, Heated Seats, Power Sunroof, Engine Start/Stop Button, Heated Steering Wheel, Wood Trim, Bluetooth, Aux/USB Adapter, Steering Wheel Audio Controls, Xenon Headlights, Power Seats with Driver Memory, 17 Inch Alloy Wheels and much more. For those looking for a luxury experience and driving dynamics above all other concerns, none will satisfy like the 328i. Call the Toy Barn of Dublin today for more details on this exceptional One-Owner example, (866)974-3345.

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Friday	10:00 AM - 6:00 PM	
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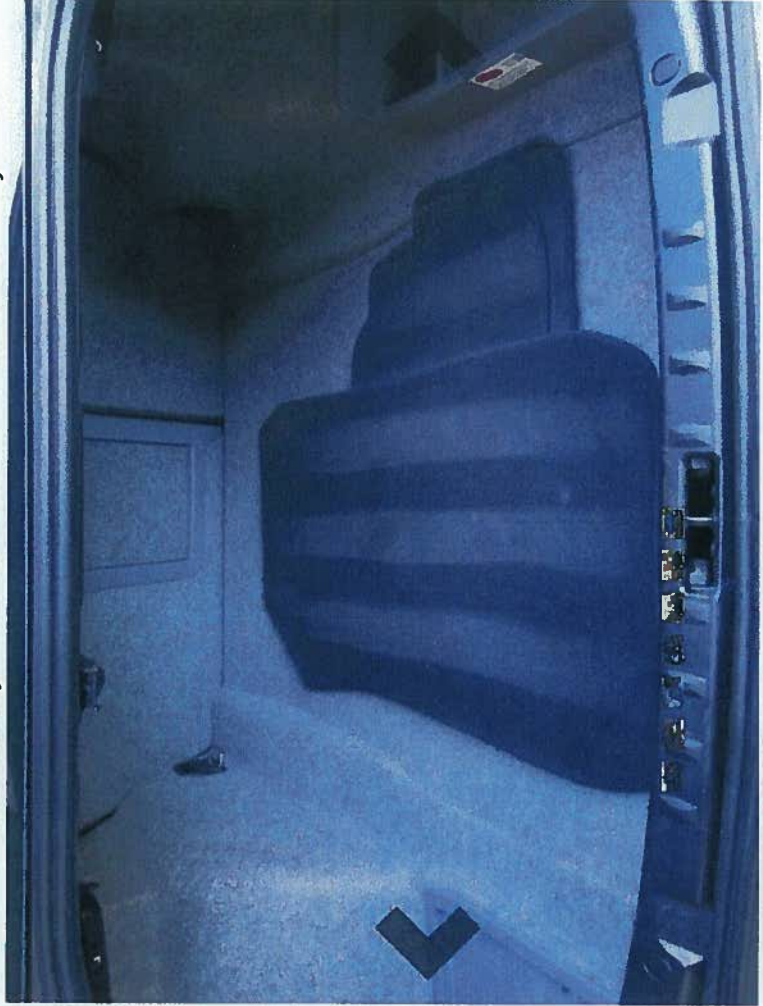
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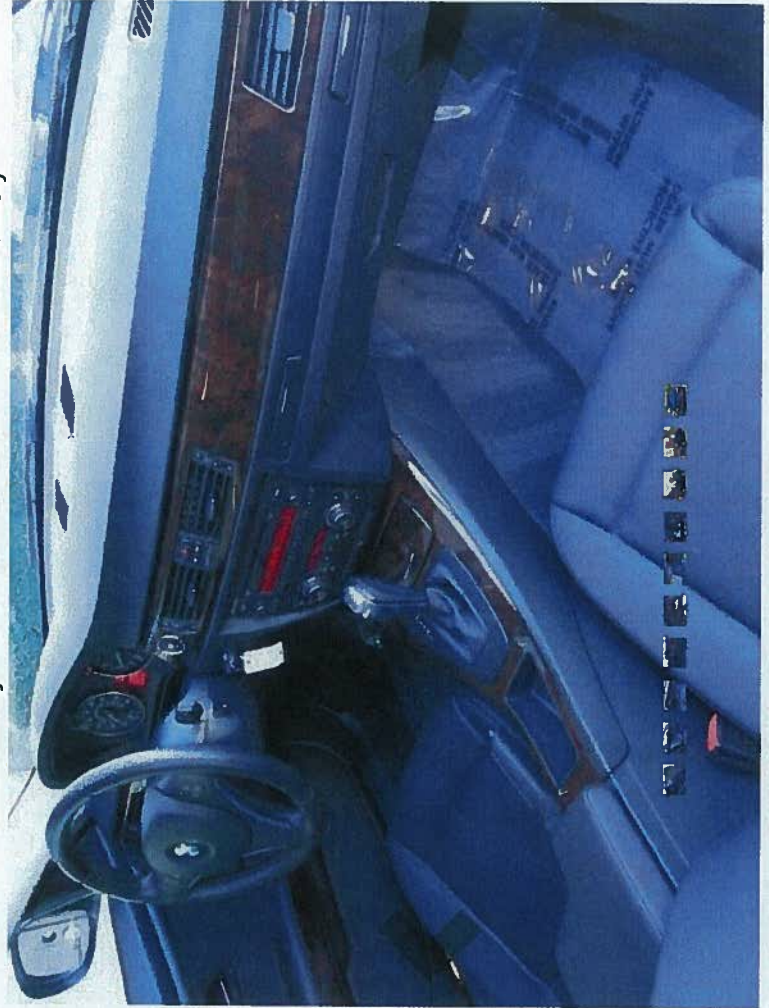
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2013 BMW 3 Series 328i xDrive

\$24,986 USD

Photo Gallery

Video Gallery



- Call 866-974-3345
- CONDITION: Pre-Owned
 - MILEAGE: 36431
 - TRIM: 328i xDrive
 - EXTERIOR: Jet Black
 - INTERIOR: Black
 - Body Style 2dr Car
 - Engine: Gas I6 3.0L/183
 - TRANSMISSION: Automatic
 - Drivetrain: AWD
 - VIN: WBAKF3C56DJ386078
 - Stock: 11343

Carfax

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2013 BMW 3 Series 328i xDrive

HOURS OF OPERATION**ADDRESS**

Monday-Thrusday 10:00 AM - 7:00 PM

5100 Post Road,
Dublin, OH 43017

Friday 10:00 AM - 6:00 PM

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Saturday 10:00 AM - 6:00 PM

Directions

Sunday CLOSED

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3m1!4b1!4m2!3m1!

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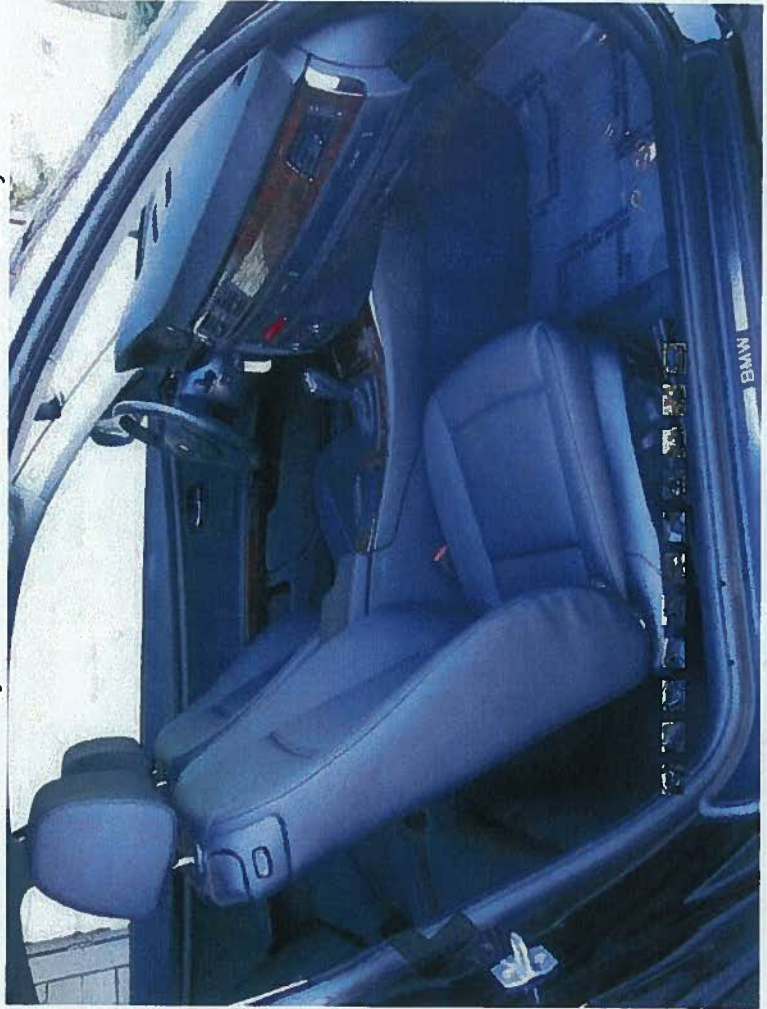
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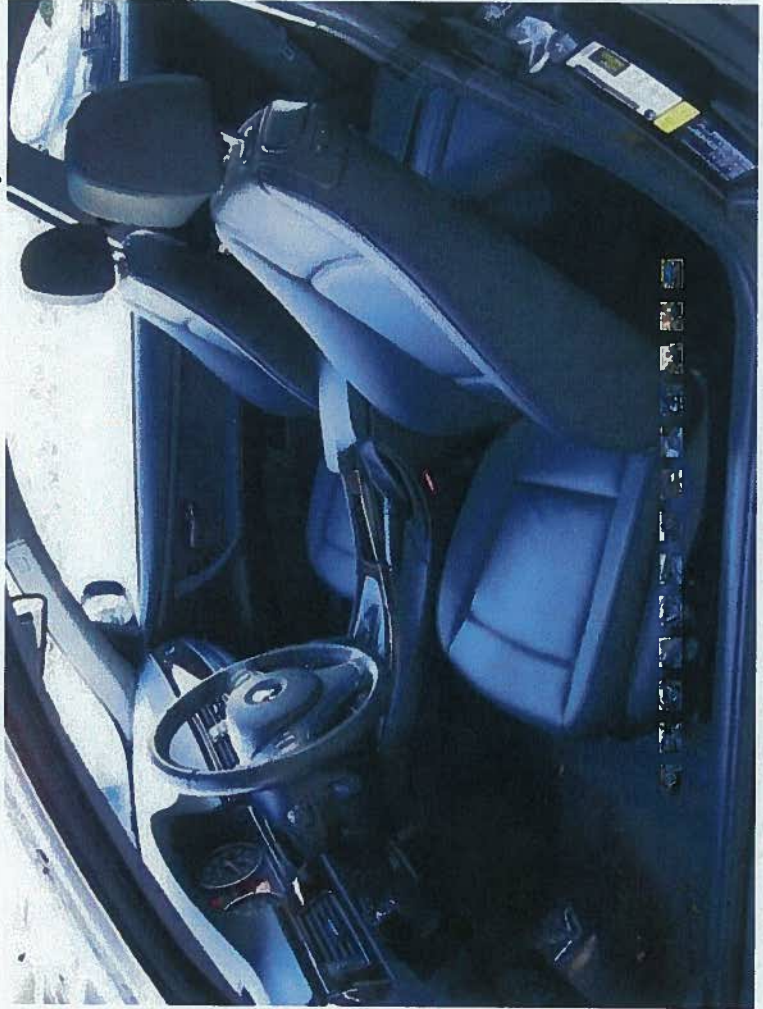
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2013 BMW 3 Series 328i xDrive

\$24,986 USD

Photo Gallery



Video Gallery

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 - TRANSMISSION: Automatic
 - Drivetrain: AWD
 - VIN: WBAKF3C56DJ386078
 - Stock: 11343

Carfax

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2013 BMW 3 Series 328i xDrive

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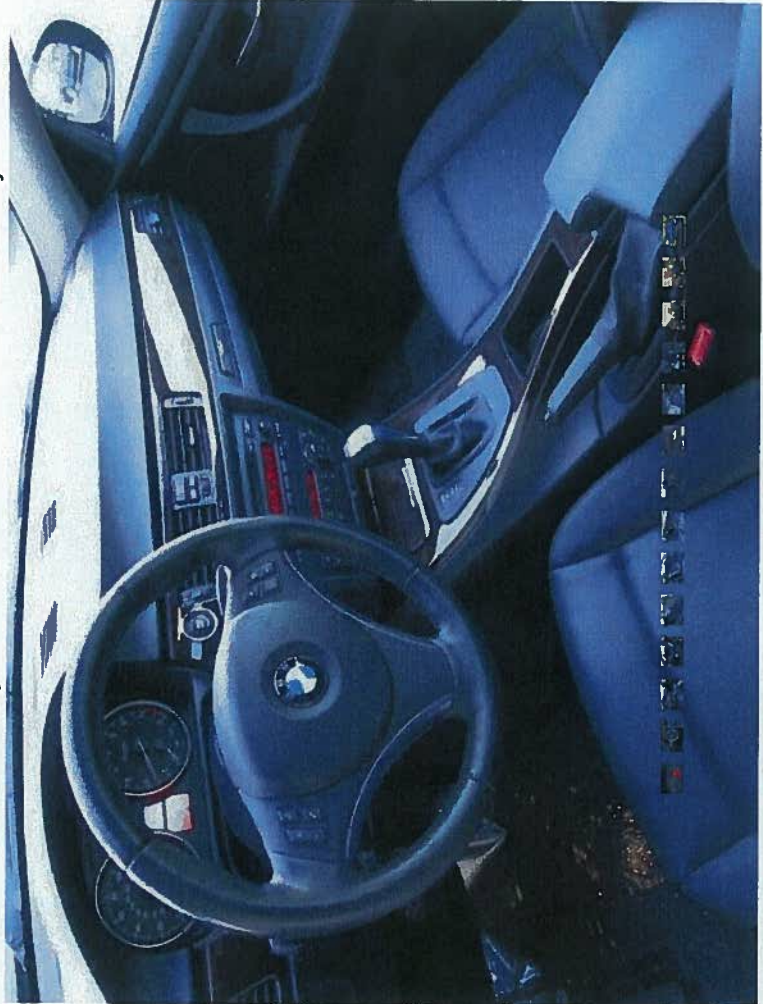
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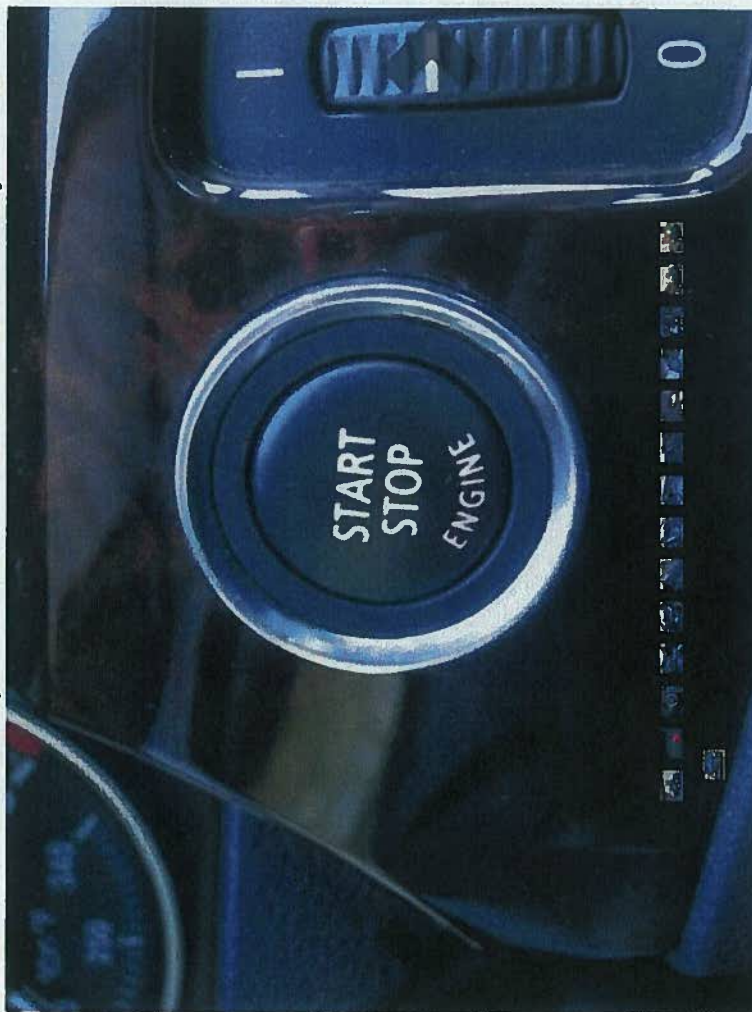
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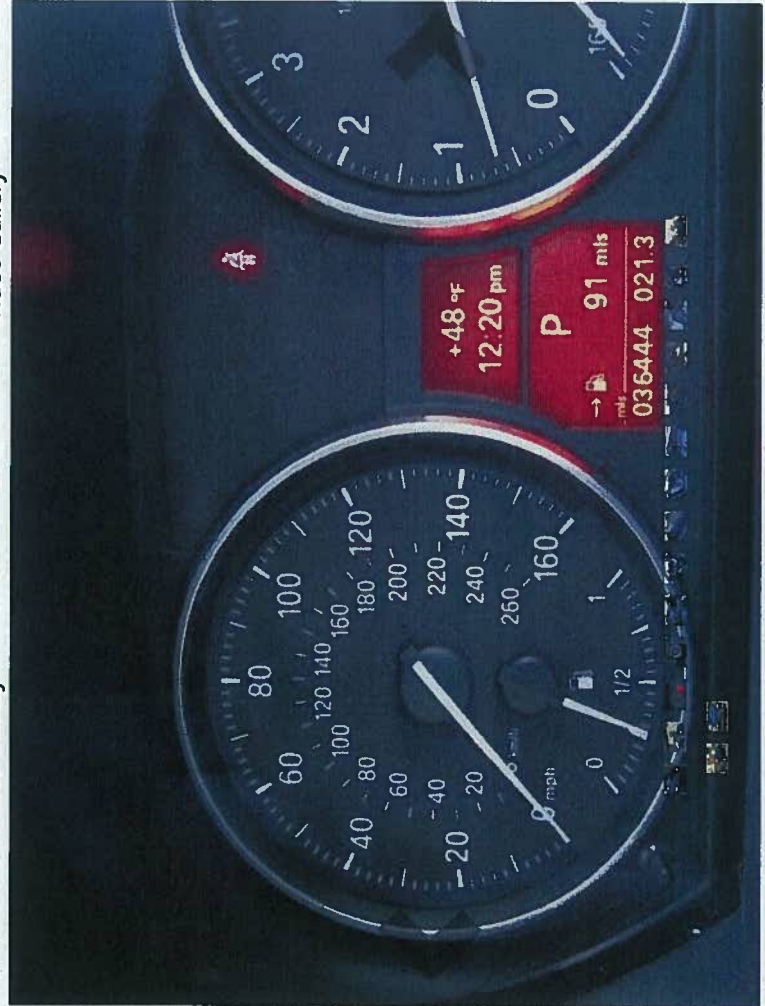
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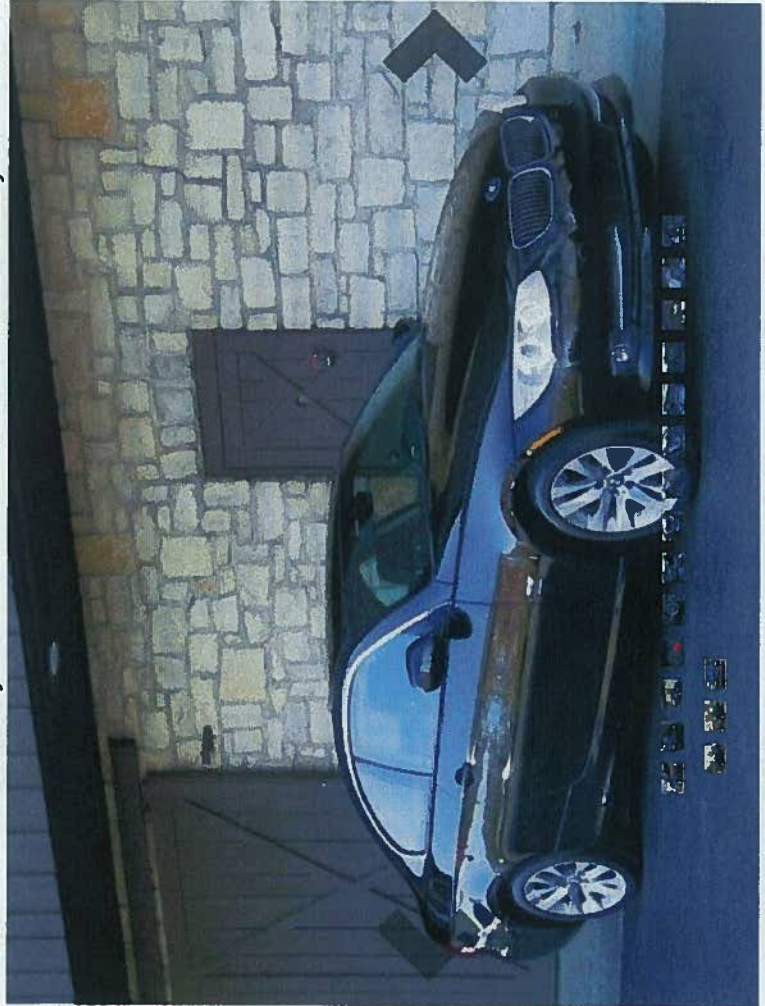
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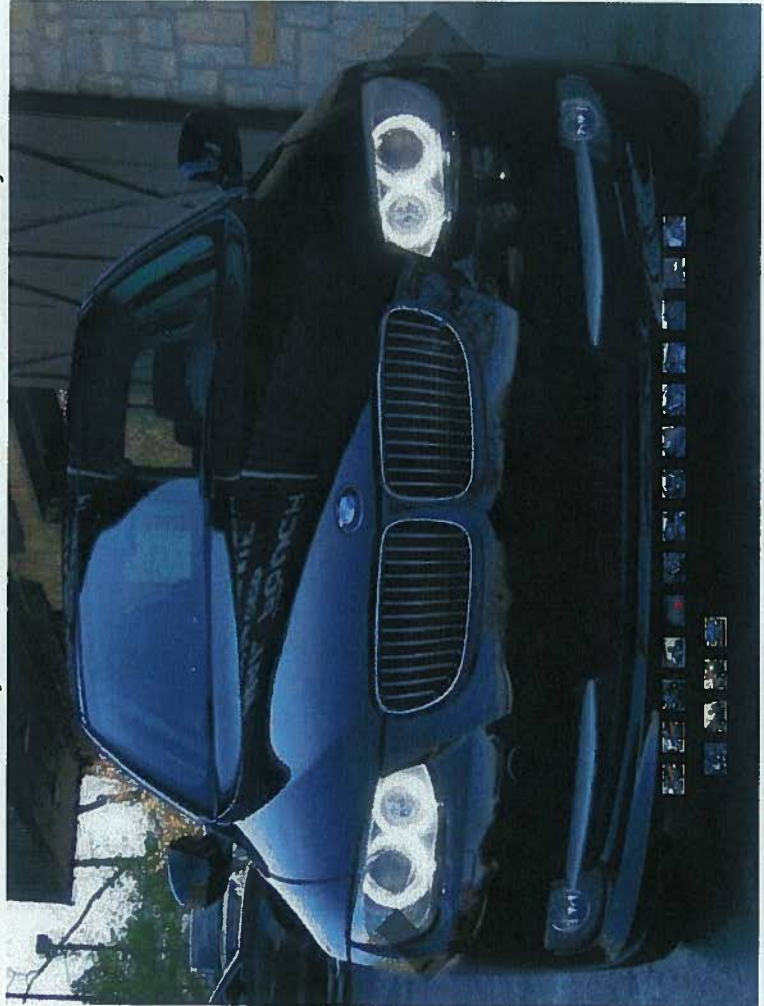
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Vehicle Summary

Standard Features

Dealer Comments

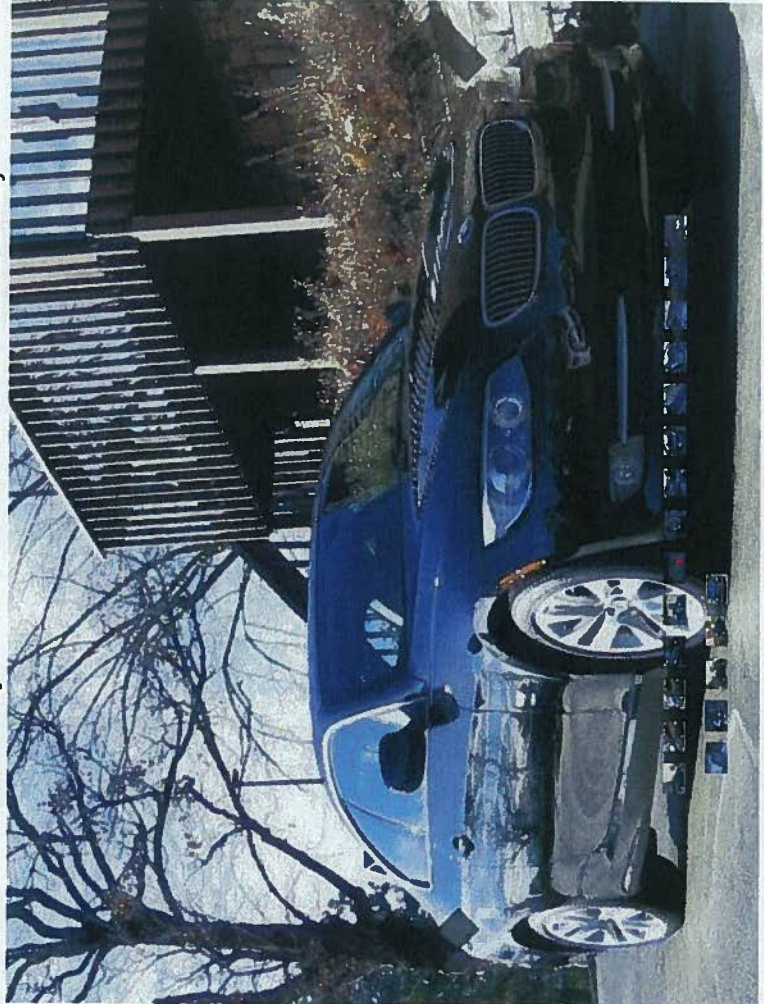
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2013 BMW 3 Series 328i xDrive

\$24,986 USD

Photo Gallery



Video Gallery

- Call 866-974-3345
- CONDITION: Pre-Owned
 - MILEAGE: 36431
 - TRIM: 328i xDrive
 - EXTERIOR: Jet Black
 - INTERIOR: Black
 - Body Style 2dr Car
 - Engine: Gas I6 3.0L/183
 - TRANSMISSION: Automatic
 - Drivetrain: AWD
 - VIN: WBAKF3C56DJ386078
 - Stock: 11343

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2013 BMW 3 Series 328i xDrive

HOURS OF OPERATION

	ADDRESS
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Friday	(https://www.google.com/maps/place/5239+Van+Nuyss+Boulevard,+Los+Angeles,+CA+91401? utm_uptracs=organic-search%3Agoogle)Get
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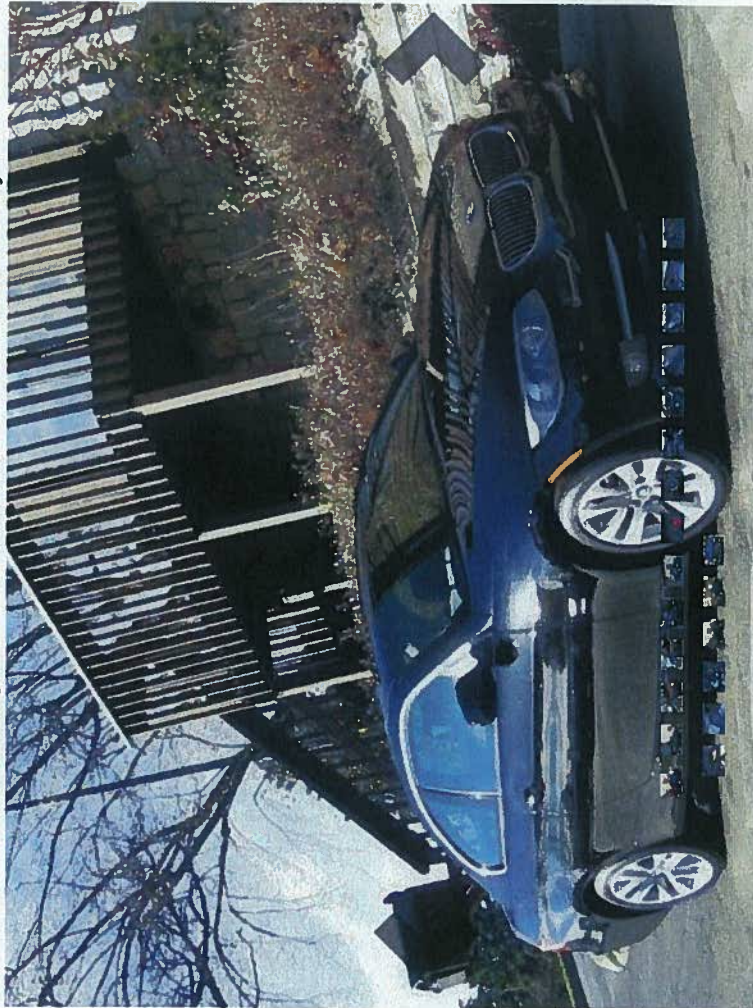
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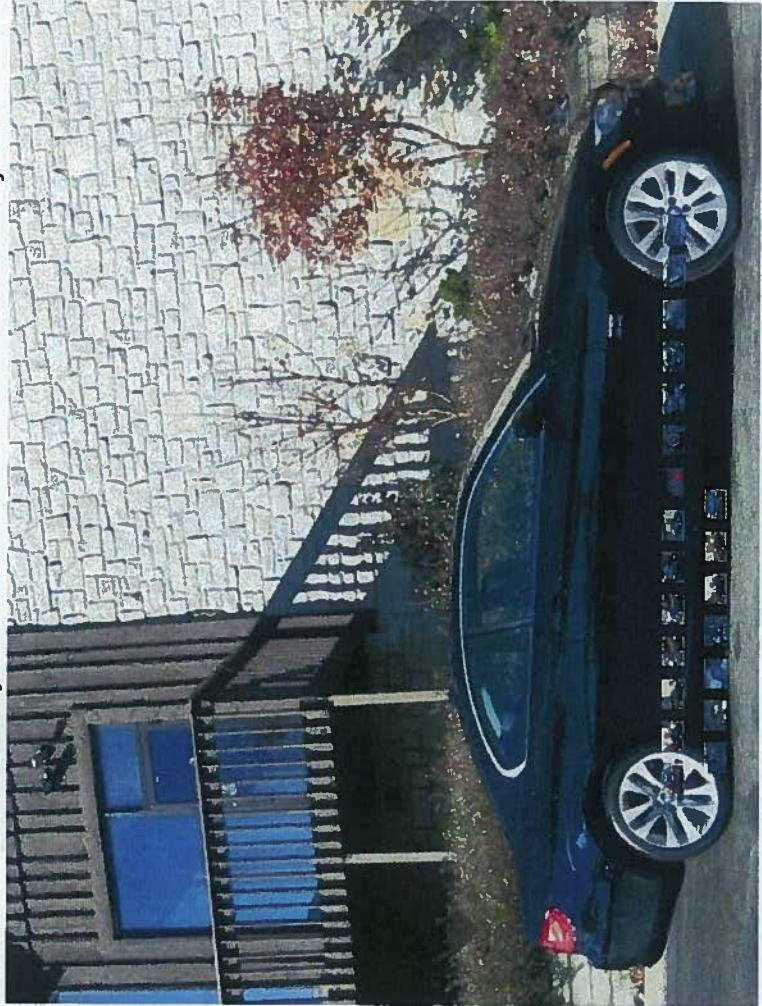
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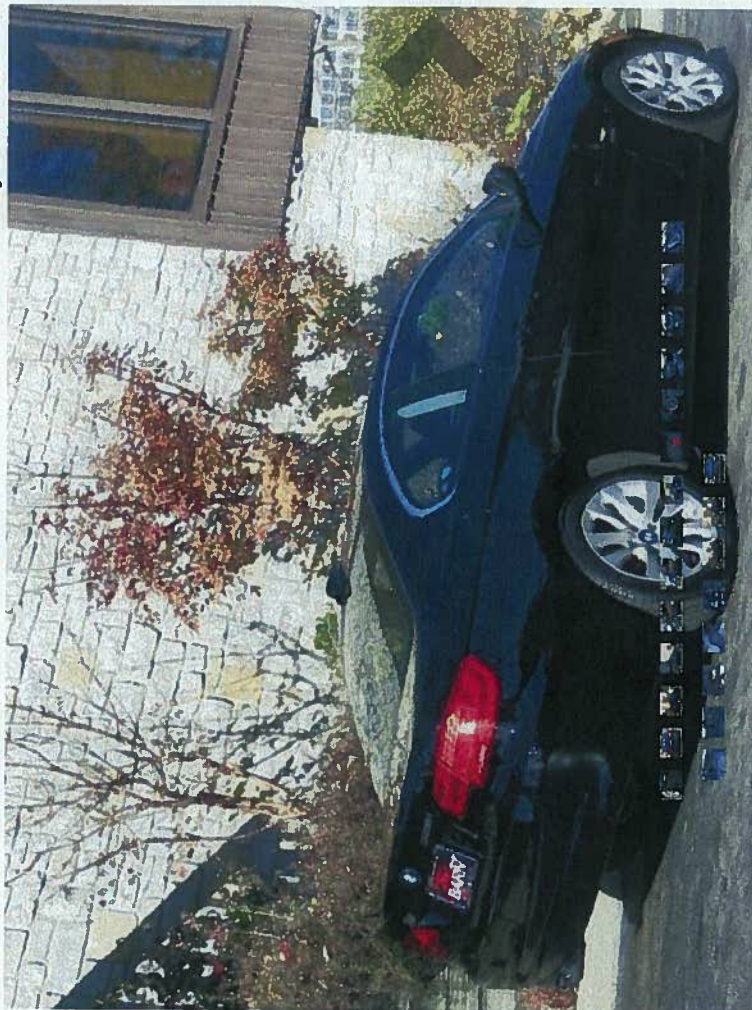
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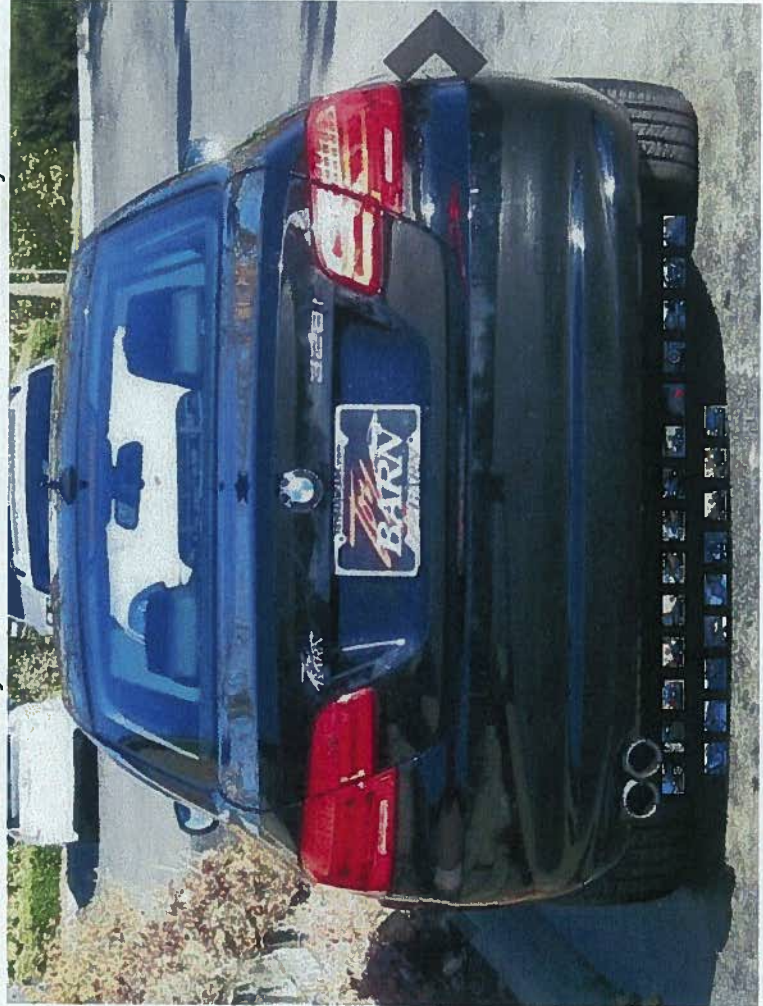
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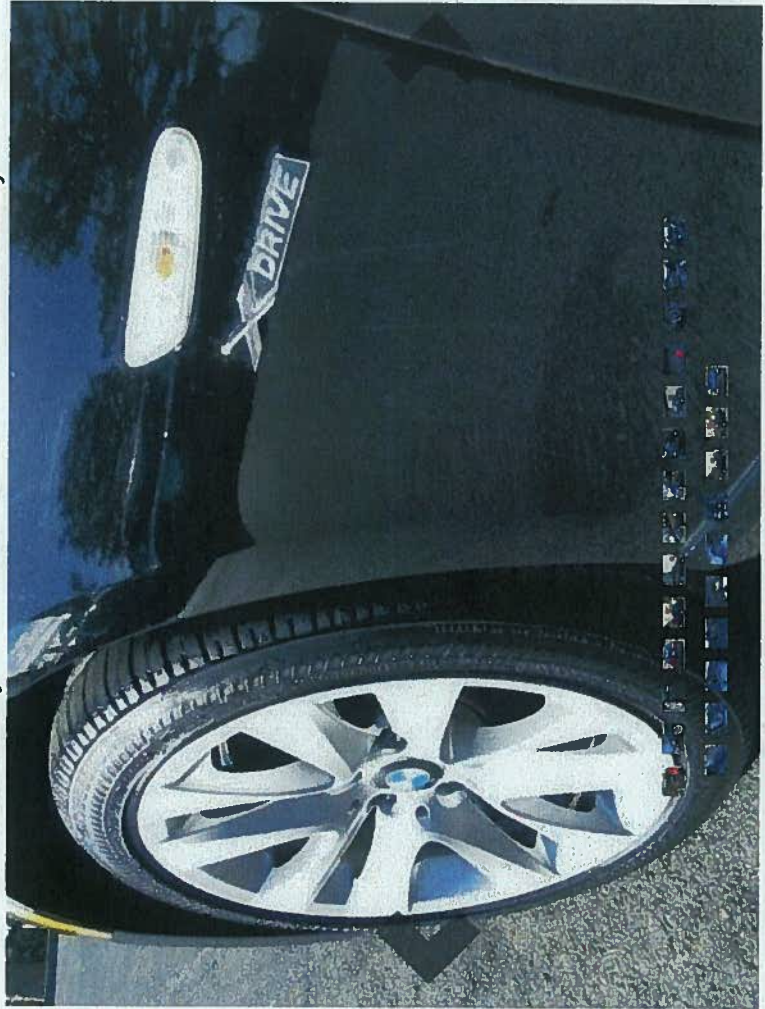
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Video Gallery

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2013 BMW 3 Series 328i xDrive

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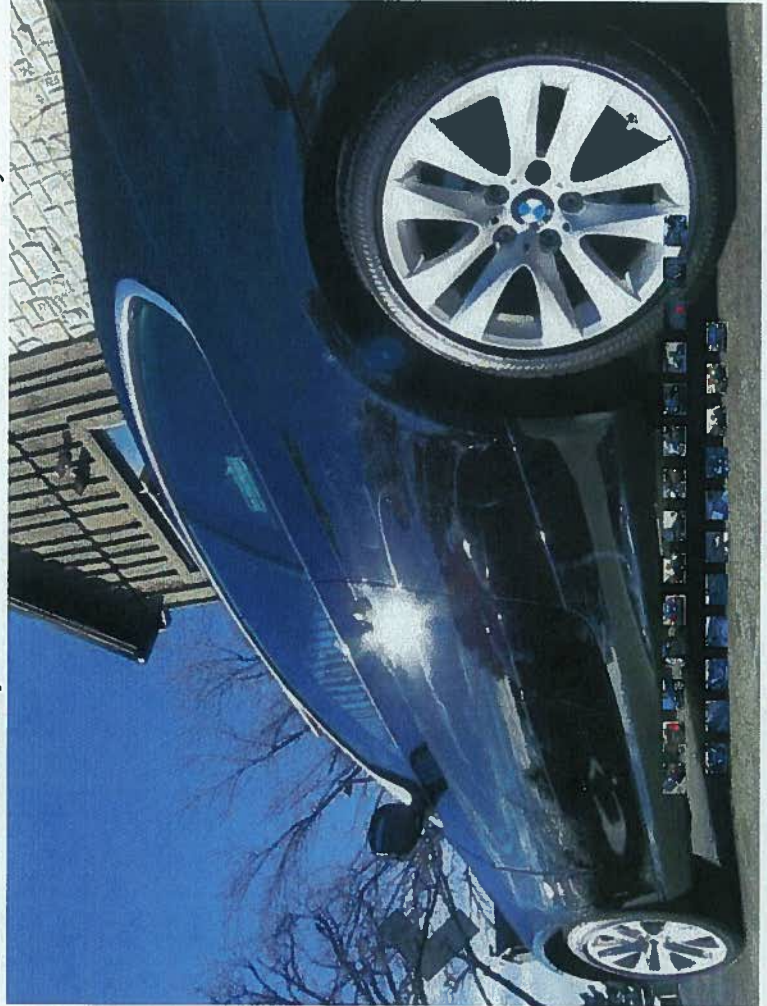
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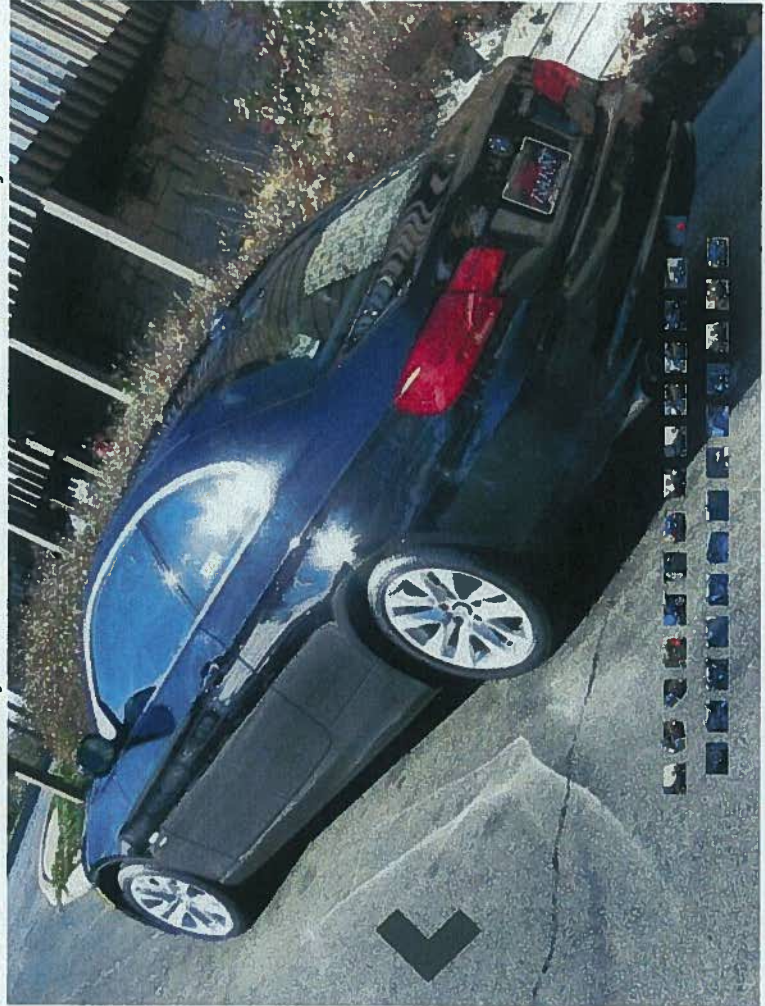
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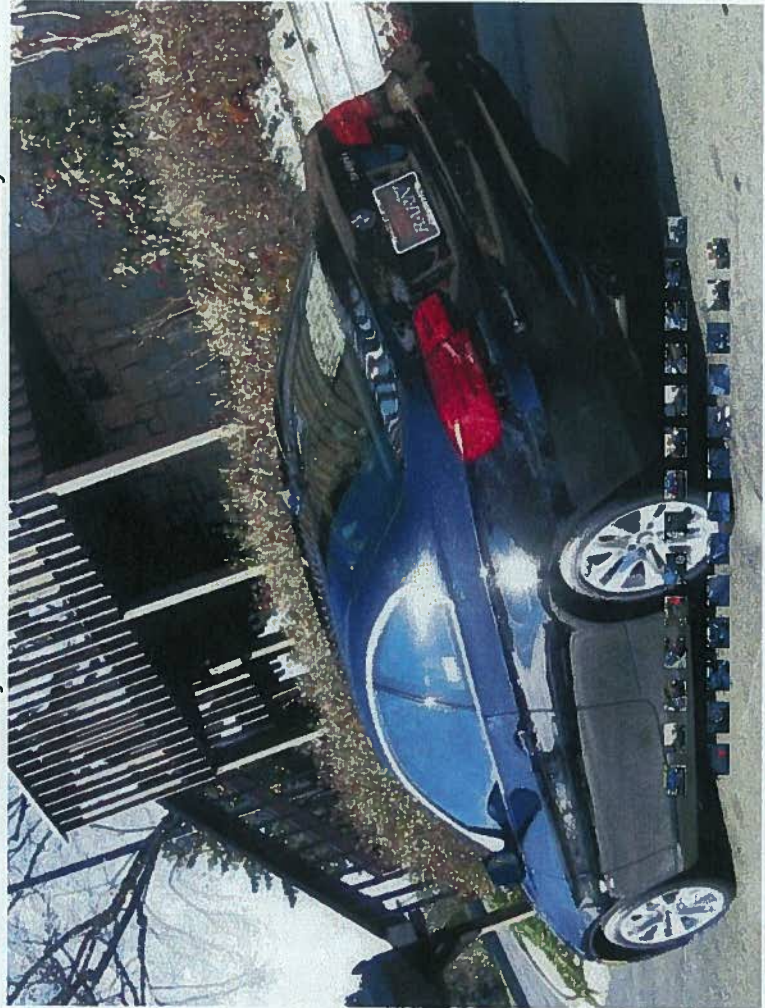
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Saturday 10:00 AM - 6:00 PM

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1s0x8838932c0c99f8a1:0xebfeacb597596eda?

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Have a question or want more information about this vehicle? Call us now! 866-974-3345

Vehicle Summary

Standard Features

Dealer Comments

- If you're in the market for an entry-level luxury car that provides a tremendous mix of handling, ride quality, performance, luxury and styling all into one package than the 2013 BMW 328i xDrive is our top choice! Finalized in Jet Black over Black leather, this 3.0L inline V6 produces a fantastic 230hp and 200 lb-ft of torque. This exquisite coupe comes loaded with impressive options: 6-Speed Automatic Transmission, Premium Package, Heated Seats, Power Sunroof, Engine Start/Stop Button, Heated Steering Wheel, Wood Trim, Bluetooth, Aux/USB Adapter, Steering Wheel Audio Controls, Xenon Headlights, Power Seats with Driver Memory, 17 Inch Alloy Wheels and much more. For those looking for a luxury experience and driving dynamics above all other concerns, none will satisfy like the 328i. Call the Toy Barn of Dublin today for more details on this exceptional One-Owner example, (866)974-3345.

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2013 BMW 3 Series 328i xDrive

\$24,986 USD

Photo Gallery



Video Gallery

Call 866-974-3345

- CONDITION: Pre-Owned
- MILEAGE: 36431
- TRIM: 328i xDrive
- EXTERIOR: Jet Black
- INTERIOR: Black
- Body Style 2dr Car
- Engine: Gas I6 3.0L/183
- TRANSMISSION: Automatic
- Drivetrain: AWD
- VIN: WBAKF3C56DJ386078
- Stock: 11343

Carfax

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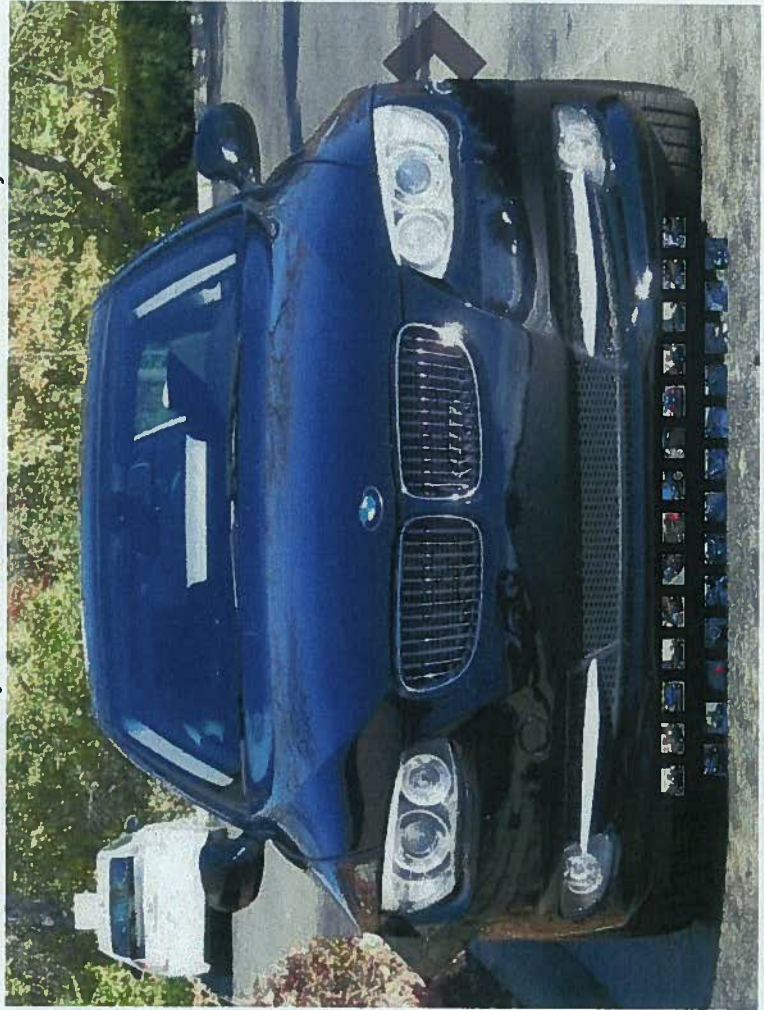
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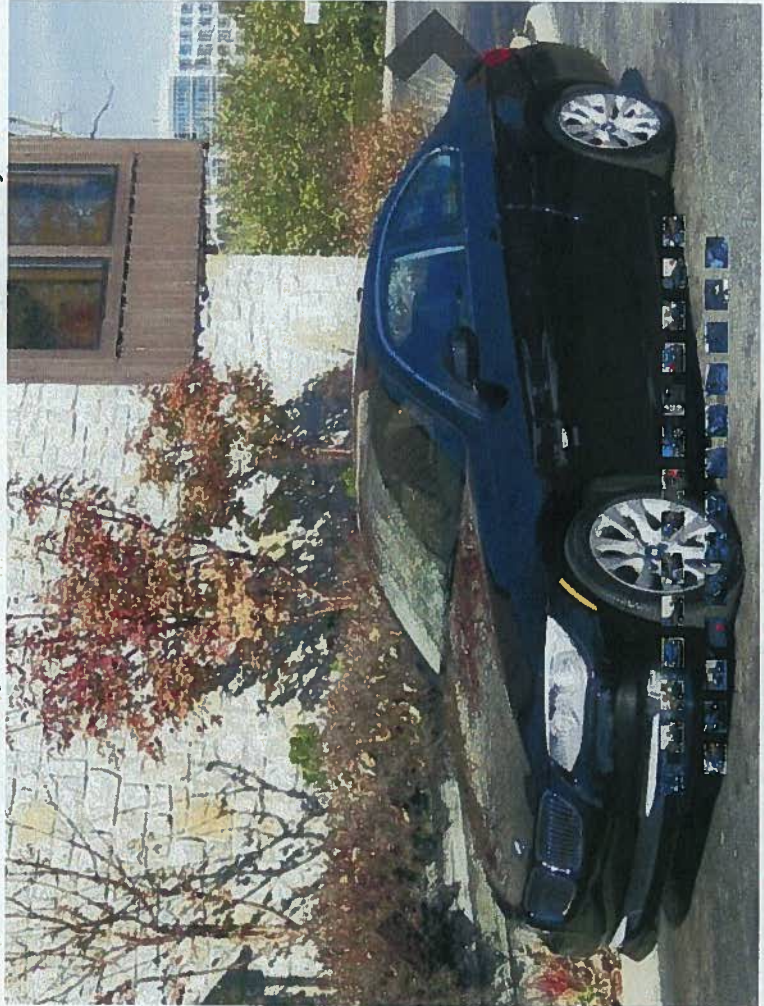
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